OCEAN COUNTY LANDFILL CORPORATION

SANITARY LANDFILL

January 28, 2016

Via Federal Express

United States Environmental Protection Agency
Region 2, Permitting Section, Air Branch
290 Broadway
New York, NY 10007

Re: Draft Title V (Part 71) Permit No. P71-OCMH-001

Attention: Steven C. Riva

Dear Mr. Riva:

Enclosed please find comments submitted on behalf of the Ocean County Landfill Corp. (OCLC) with regard to the draft Title V Part 71 Permit prepared by the United States Environmental Protection Agency (EPA) Region 2. The draft Permit was prepared in response to applications filed by OCLC and MRPC Holdings, LLC (MRPC). Currently OCLC and MRPC hold separate Part 70 Title V Permits issued by the New Jersey Department of Environmental Protection (NJDEP) pursuant to the State's Title V Implementation Plan.

Applications for Part 71 Permits were filed in response to an Order to file such applications issued by Region 2 to OCLC and MRPC on November 23, 2011. You will note that the Order afforded OCLC and MRPC the choice to file a single application or separate applications. Consistent with the Order and 40 C.F.R. 64.1, they chose the latter and submitted applications with permit conditions applicable only to the facilities and emission units they control as the exclusive owner and operator. Without explaining why, EPA Region 2 rejected this choice and has drafted a single Part 71 Permit naming each as a Permittee accountable for compliance with all permit conditions and requirements including those applicable to the facilities and emission units they do not own or operate and over which they have no control. Region 2 has combined their facilities into a fictional entity, with a fictional name, 'Ocean County Landfill and MRPC Holdings LFGTE Operations.'

The enclosed comments include OCLC's continuing objections to Region 2's decision to combine its Solid Waste Facility as a single source with the electric generating facilities that are owned and exclusively operated by MRPC (referred to as Landfill Gas to Energy (LFGTE) Facilities because they purchase and beneficially use the gas by-product of OCLC's landfilling operation as fuel). The comments also include objections to OCLC being considered a Permittee accountable for compliance with permit requirements, including testing, monitoring, record keeping and reporting, pertaining to the emission units at the MRPC LFGTE Facilities. Again, OCLC neither owns nor operates the MRPC LFGTE Facilities and has no control over their compliance or not with such permit conditions.

OCLC's comments also include objections to MRPC being considered a Permittee with respect to the OCLC Solid Waste Facility and its emission units which are exclusively owned and operated by OCLC. Under State law, OCLC may not relinquish control with respect to any aspect of its solid waste disposal operations to such an unlicensed party, and has not done so.

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These objections and others are more fully addressed in the enclosed comments. Annexed thereto as Attachment A is a graph setting forth technical comments/objections regarding specific conditions of the draft Permit. Annexed as Attachment B is a depiction of the OCLC corporate relationships demonstrating no affiliations with MRPC. Annexed as Attachment C is a copy of the order placed by MRPC's parent for its purchase of the engines at the newer of the two MRPC LFGTE Facilities, which counters Region 2's claim that these engines were once owned by OCLC's parent.

As instructed by Region 2, OCLC previously submitted a copy of its currently effective Part 70 Permit with recent modifications approved by NJDEP to be included in any Part 71 Permit issued. For the reasons stated in Section VIII(3) of the enclosed comments, OCLC requests treatment of the screeners as portable, non-road engines. As demonstrated to NJDEP, they will not be used at any single location at its Solid Waste Facility for 12 months or longer and, thus, should not be regulated as stationary sources. See 40 C.F.R. 1068.30(1)(iii).

OCLC and its consultants can be available to meet to discuss and answer any questions regarding the enclosed comments, and would appreciate the opportunity to do so before a final decision on the draft Permit is made.

Very truly yours,

Lawrence C. Hesse, Pres.
Ocean County Landfill Corp.

Encl.
cc: Martin L. Ryan, P.E., P.P.
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OCEAN COUNTY LANDFILL CORP.
COMMENTS ON DRAFT PART 71 PERMIT P71-OCMH-001

TABLE OF CONTENTS

OCEAN COUNTY LANDFILL CORP.
COMMENTS ON DRAFT PERMIT P71-OCMH-001

I INTRODUCTION

The comments herein and in Attachment A, and the information shown on Attachments B and C, are submitted by the Ocean County Landfill Corp. (OCLC) in response to the above-referenced draft Part 71 Permit issued for public comment by the United States Environmental Protection Agency (EPA) Region 2.[1] OCLC also relies on all previous submissions on the question of common control as though incorporated herein. The prior submissions include but are not limited to OCLC, and MRPC Holdings, LLC (formerly Manchester Renewal Power Corp) (MRPC), responses to questioning by Region 2 on common control matters.[2] They also include OCLC submissions supporting reconsideration of Region 2's determination on common control, and OCLC submissions in opposition to the Order requiring applications for Part 71 permits and giving notice of Region 2's initiation of this process toward revocation and replacement of the separate Part 70 Permits issued to OCLC and MRPC by the New Jersey Department of Environmental Protection (NJDEP). All such submissions are part of this permitting record and relied upon by OCLC as further support for related comments/objections herein.

The comments below address matters set forth in the Statement of Basis accompanying the draft Part 71 Permit and in related conditions proposed therein. They include objections to Region 2's treatment of the Solid Waste Facility (SWF) owned and exclusively operated by OCLC and the electric generating facilities (a/k/a "LFGTE Facilities") owned and exclusively operated by MRPC as a single source for Title V permitting or any other purposes of the Clean Air Act, 42

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[1]References to OCLC refer to OCLC and/or its parent, Atlantic Pier Company, and/or any one or more of the affiliates in its closely-held corporate family. See Attachment B.

[2]Unless indicated otherwise, references to MRPC include any MRPC-related companies. See MRPC submission indicating corporate affiliations relative to its LFGTE Facilities. References to MRPC Facilities or MRPC LFGTE Facilities are to both the set of six engines and related appurtenances owned and operated by MRPC comprising the electric generating facility that went into operation in or about 1997 and the set of six engines and related appurtenances owned and operated by MRPC comprising the electric generating facility that went into operation in 2007.

Facilities like the MRPC electric power plants are referred to as landfill gas-to-energy, or LFGTE, facilities because they beneficially use the gas by-product from decomposing solid waste disposed at landfills as fuel in lieu of more environmentally harmful fossil fuels. Landfill gas is considered a renewable resource and the electricity generated is referred to as 'green power.' Its use as fuel is promoted by EPA's Landfill Methane Outreach Program and through federal tax credits and various clean energy grant programs. In fact, MRPC's older facility was subsidized under a power purchase agreement with an electric utility approved by the New Jersey Board of Public Utilities (NJBPU). MRPC received a grant for development of its newer facility from the NJBPU's Clean Energy Program.

U.S.C. 7401 et seq. (CAA). They also include objections to Region 2's Order requiring OCLC and MRPC to file Part 71 Permit applications and the proposal to revoke OCLC's Part 70 Permit. In addition, they include OCLC's objections to the proposed issuance of a single Part 71 Permit that treats OCLC and MRPC as Permittees with respect to all permit conditions including those pertaining to the facilities and emission units owned and exclusively operated by the other.

For the reasons set forth below and in the submissions incorporated herein by reference, OCLC requests that Region 2 reverse its May 11, 2009 common control determination, rescind its Order to file Part 71 Permit applications and withdraw the proposed Part 71 Permit, thereby terminating the process initiated to revoke the separate Part 70 Permits issued to OCLC and MRPC by the NJDEP and leaving the Part 70 Permits in effect.

II INADEQUATE PUBLIC NOTICE

Significant information is omitted in the Background section of the Public Notice resulting in inadequate notice to the public of the important issues raised by Region 2's proposal to issue the Part 71 Permit. For example, there is no mention at all in the published Notice of Region 2's determination that the OCLC SWF and MRPC LFGTE Facilities have 'a common control relationship' or the Order requiring Part 71 Permit applications to be filed or Region 2's intent to revoke existing Part 70 Permits. As Region 2 argued successfully before the Third Circuit Court of Appeals, its determination on the question of common control was not final and is part of this permitting process. See Statement of Basis, fn11. The Public Notice should include such matters, and the tenor of Region 2's disposition of the pivotal issue of common control, thereby giving interested parties notice thereof and an opportunity to respond.

In addition, the Background portion of the Public Notice includes inaccurate statements, and this too renders it ineffective notice. Two permit applications were filed, not one, they were filed by Order of Region 2, and the applications were made by OCLC and MRPC not by any inanimate 'source,' and certainly not by a nonentity with a fictitious name created by Region 2.

III RELEVANT FACTS

Enumerated below are relevant facts in the record of submissions made by OCLC and MRPC in response to Region 2's questioning on the issue of common control. See also Attachment B. They provide dispositive evidence that the decision to combine the OCLC SWF and MRPC LFGTE Facilities and their emission units as a single source for Title V permitting has no factual support.

1) OCLC and MRPC do not own any stock in the other's company much less a controlling interest, they have no shared corporate officers or employees, and they have no management agreement or any other type of agreement wherein one has authorized the other to exercise any operational control over their respective facilities and emission units;

2) OCLC is the legal owner and exclusive operator of the OCLC SWF and all emission units at the SWF including its landfill gas collection/delivery systems and flares;

3) MRPC is the legal owner and exclusive operator of the MRPC LFGTE Facilities, their engines and all other emission units at these facilities;

4) By choice, MRPC is engaged in the business of generating 'green power,' that is, in generating electricity using only landfill gas as fuel instead of more environmentally harmful fossil fuels; MRPC is not engaged in the business of solid waste disposal;

5) OCLC is engaged in the business of solid waste disposal at its SWF; OCLC is not a generator of electricity;[3]

6) Neither OCLC nor MRPC has any financial investment in the other and neither has any control over the decisions of the other regarding the operation of their respective facilities or the emission units at their respective facilities;[4]

7) MRPC has no service relationship with the solid waste disposal customers that dispose of waste at OCLC's SWF and OCLC has no service relationship with customers purchasing electric power or capacity from MRPC; nor do they have any authority to affect or influence the other's decisions with respect to such services or service fees.

IV GENERAL OBJECTIONS

OCLC objects to the misstatements and false impressions fostered throughout the Statement of Basis and draft Part 71 Permit conditions concerning the legal status and relationships of OCLC and MRPC and the OCLC SWF and MRPC LFGTE Facilities. Region 2's characterization of their commercial interactions and MRPC's choice to use only landfill gas as fuel to generate 'green power' as a 'common control relationship,' and its decision to therefore treat their facilities as a single source and name the result 'Ocean County Landfill and MRPC Holdings LFGTE Operations,' does not change the relevant facts enumerated above.

As a matter of indisputable, and undisputed, fact the OCLC SWF and the MRPC LFGTE Facilities are different businesses and emission sources with emission units that are owned and exclusively operated by wholly unrelated companies. OCLC objects to any and all statements in the Statement of Basis and draft Part 71 Permit conditions that intentionally or otherwise imply the existence of any facts contrary to those enumerated above. Such contradictions of indisputable facts should be retracted and corrected for the record.

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[3]The LFGTE Facilities are not an operation of the OCLC Landfill as represented by Region 2.

[4]Splitting the amount of a tax credit available to the seller or user of a renewable resource like landfill gas is obviously a component of consideration, not a 'financial interest' in each other's company as mischaracterized by Region 2. Common Control Letter, at p. 4.

Particularly objectionable are statements suggesting, and any draft Part 71 Permit conditions presupposing, that MRPC might have rights regarding the operation of OCLC's SWF and/or its emission units. OCLC's SWF is a public utility and OCLC engages in the business of solid waste disposal pursuant to approvals and a license issued under State law that must be complied with in addition to any CAA requirements. OCLC has been issued a Certificate of Public Convenience and Necessity authorizing it to provide solid waste utility services. OCLC holds an A-901 License issued by the NJDEP authorizing it to engage in the solid waste disposal business.[5] OCLC holds a Solid Waste Facility Permit issued by the NJDEP that imposes operational requirements beyond those required to meet CAA requirements. OCLC's SWF is designated in the NJDEP approved Ocean County District Solid Waste Management Plan as the disposal site for non-hazardous solid waste generated in the County that is not recycled. OCLC holds a franchise for this purpose.

Such approvals, and its franchise obligations, do not allow OCLC to relinquish or authorize control of any aspect of its SWF operations to an unlicensed party such as MRPC. Nor is it acceptable to have any incorrect suggestion that it has done so or will be doing so remain uncorrected in a public record. Furthermore, OCLC's ability to ensure uninterrupted solid waste utility services to the communities and public of Ocean County - who through their disposal rates have paid for landfill infrastructure and capacity - cannot reasonably or responsibly be tied to an unaffiliated corporation's compliance with Title V permit requirements applicable to the emission units at that company's LFGTE Facilities over which OCLC has no control.

V UNAUTHORIZED TREATMENT AS A SINGLE SOURCE

For the reasons set forth throughout these comments, and in previous submissions, OCLC objects to its SWF being treated as a single source with MRPC's LFGTE Facilities for Title V permitting or any other CAA purpose. In order to group emission sources as a single source, the CAA requires a finding that they are "under common control." 42 U.S.C. 7661, 7472; see also 42 U.S.C. 7412. EPA regulations require the following findings: (1) the sources are in the same major two digit Standard Industrial Code (SIC) classification; (2) they are located on contingent or adjacent properties; and (3) they are "under common control of the same person (or persons under common control)." 40 C.F.R. 70.2, 71.2, 51.11(a)(5), 51.165 (a)(ii), 51.166(a)(5)(6). The crux of the issue in this case is Region 2's invalid determination on common control.[6]

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[5]An A-901 License is required to engage in the business of solid waste disposal in New Jersey. To obtain such a License all parties with an interest in or empowered to make discretionary decisions with respect to a solid waste disposal operation must be investigated and found acceptable by the State Attorney General's Office. N.J.S.A. 13:1E-126 et seq.

[6]OCLC has not disputed Region 2's finding that the first two of the three criteria for single source treatment are met. The MRPC LFGTE Facilities occupy leaseholds adjacent to the SWF leasehold, and waste disposal and electric generating facilities are in the same major two-digit SIC classification. It warrants note that the SIC classifications are out-of-date. The NAICS, currently used by other federal agencies and EPA for other purposes, recognize the disparity between solid waste disposal operations and electric generating facilities.

(1) Absence of Common Control

The predicate for Region 2's decision requiring treatment of the OCLC SWF and MRPC LFGTE Facilities as a single source for Title V permitting purposes - and the sole cause stated for initiating proceedings for Part 71 permitting to replace the currently effective Part 70 Permits issued separately to OCLC and MRPC by the NJDEP - is an unsustainable common control determination. This determination is set forth in Region 2's letter to OCLC and MRPC dated May 11, 2009 (Common Control Letter).

Tellingly, Region 2 did not in the Common Control Letter (nor at any time since) identify any person with common control over the OCLC SWF and MRPC LFGTE Facilities or their respective emission units as required for permitting as a single source. In fact, Region 2's proposal to make OCLC and MRPC each Permittees on a single Part 71 Permit is a tacit admission that it did not find a common controller (OCLC's objections to the proposed Permittee designations are set forth in Section VI of these comments).

As demonstrated conclusively by the facts enumerated in Section III, supra, no evidence of common control by the same person can be found and, indeed, all relevant evidence proves an absence of common control. Thus, Region 2 has no statutory or regulatory authority to treat OCLC's SWF and MRPC's LFGTE Facilities as a single source for Title V permitting or any other CAA purpose. As indicated above, the CAA plainly authorizes such treatment only where the emission sources grouped are in fact "under common control," 42 U.S.C. 7661(2), and EPA's implementing regulations likewise require evidence that the sources grouped are "under the common control of the same person (or persons under common control)," 40 C.F.R. 70.1, 71.2.

To elaborate, where as a matter of undisputed fact OCLC is the exclusive owner and operator of the SWF and its emission units, and MRPC is the exclusive owner and operator of the LFGTE Facilities and their emission units, the finding of common control required for treatment as a single source cannot be made. Applying the definition EPA relies on for permit enforcement purposes, "[c]ontrol (including the terms controlling, controlled by, and under common control with) means the power to direct or cause the direction of the management and policies of a person or organization whether by the ownership of stock, voting rights, by contract or otherwise." 40 C.F.R. 66.3(f).[7] In this case, all emission sources being grouped must be subject to such control by the same person. 42 U.S.C. 7661(2); 40 C.F.R. 70.1, 71.2. "Person" as defined in the CAA means "an individual, corporation, partnership, [or] association . . . ." 42 U.S.C. 7602(e).

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[7]In the past, EPA represented that in making common control decisions it would be 'guided' by this same definition of 'control' found in the regulations of the Securities and Exchange Commission (SEC). 45 Fed. Reg. 59874, 59878 (Sept. 11, 1980). It is also the SEC's definition for "under common control." 17 C.F.R. 45.6(a). Furthermore, the SEC presumes that one person controls another only if that person is an officer of the company or has a similar status, directly or indirectly has the right to vote 25% or more of its stock, or in the case of a partnership has contributed or has the right to receive upon dissolution 25% or more of the capital. Ibid. Region 2 cannot point to any person with such common control in this case.

Thus, by definition, where OCLC and MRPC are unaffiliated entities, and OCLC is the owner and exclusive operator of the SWF and its emission units, and MRPC is the owner and exclusive operator of the LFGTE Facilities and their emission units, neither their facilities nor their emission units are under common control of the same person. Stated another way, to be under common control, there must be a common owner or operator. 40 C.F.R. 61.02 ("owner or operator" of an emission source is the "person who owns, leases, operates, controls, or supervises a stationary source."); see also 40 C.F.R. 66.3(b) ("[a]ffiliated entity means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the owner or operator of a source.").

Requiring evidence of the same owner or operator or affiliated owners or operators to demonstrate common control is consistent with the purpose of the CAA provision authorizing EPA to group emission sources for permitting as a single source. Its purpose is to enable EPA to ensure that large companies are not able to spin off portions of their operations into separate components and avoid regulation as a major stationary source commensurate with their actual size and impact on the environment. Combining the independently owned and operated OCLC SWF and MRPC LFGTE Facilities for treatment as a single source is inconsistent with this purpose. As shown by the facts enumerated in Section III, above, the OCLC SWF and the MRPC LFGTE Facilities are not components of a single operation.

Region 2's Common Control Letter does not show differently. Region 2 acknowledged that there is no ownership affiliation between OCLC and MRPC. Claims made regarding control of stock and financial investments in each other's company are inaccurate. As the record confirms, OCLC does not own any MRPC stock, much less sufficient shares of voting stock to direct or control the company or its operation of the LFGTE Facilities and their emission units. Moreover, splitting the monetary value of a tax credit available to the seller or user of a renewable resource such as landfill gas is a negotiated component of contract consideration. It is not an 'investment' in either the seller's company, or the purchaser's, as mischaracterized by Region 2.

As shown in the Common Control Letter, in making its determination on common control, Region 2 did not dispute the fact that OCLC is the exclusive owner and operator of the SWF or the fact that MRPC is the exclusive owner and operator of the LFGTE Facilities. Rather, Region 2 simply disregarded the relevance and dispositive significance of such facts in proving no common control. Instead, Region 2 turned to an invalid presumption of common control based solely on the location of the LFGTE Facilities next to the OCLC SWF. However, while an adjacent location is one of the three criteria that must be satisfied to be treated as a single source, it is not evidence that they are under common control of the same person as required by the CAA and EPA regulations for permitting as a single source.[8] 42 U.S.C. 7661(2); 40 C.F.R. 51.11(a)(5),

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[8]Region 2 misapplied a presumption said to be derived from a letter dated September 18, 1995, from William A. Spratlin, Director, EPA Air, Region 7, to the Chief of a State Air Quality Bureau. Common Control Letter (Spratlin Letter), p. 3, fn. 5. In his letter, Mr. Spratlin suggested that a presumption of common control might arise if a party locates its business on another's property without a lease spelling out the terms of use, not where, as in this case, the LFGTE Facilities are located on property leased by MRPC.

51.165(a)(ii), 51.166(a)(5)(6), 70.2,71.2.

Also shown in the Common Control Letter is Region 2's reliance on irrelevant inter-company agreements between OCLC affiliates and irrelevant, and often erroneous, descriptions of events that transpired a decade or two ago.[9] In addition, Region 2 relied on irrelevant speculation as to what OCLC's parent may OR MAY NOT do in the future with respect to stock currently held by MRPC in the company operating the newest of its two LFGTE Facilities. Obviously, corporate ownerships can change and if they do any warranted permit changes can be made. 40 C.F.R. 70.7(d)(iv) (allows an administrative permit amendment to transfer permit responsibilities should the owner or operator of a facility change). The pertinent fact is that OCLC did not own any such MRPC stock when the Common Control Letter issued, and it does not own any such MRPC stock today. See Attachment B and MRPC corporate ownership chart.

As the Common Control Letter further demonstrates, Region 2's determination was not based on facts demonstrating common control as defined in its own regulations and the SEC regulations.[10] Rather, it was based solely on Region 2's subjective opinion that 'features' of the OCLC and MRPC relationships are indicia of an unexplained 'common control relationship' and an unexplained 'control relationship' between their facilities. Common Control Letter, p. 3, fn. 7. These 'features' are: (1) MRPC's choice to lease sites for its LFGTE Facilities adjacent to the SWF's leasehold; (2) contract commitments to deliver and purchase landfill gas; (3) agreement that the seller retains all rights to any landfill gas not used by the buyer; (4) specific performance terms in a typical remedies provision of their contract; and (5) MRPC's choice to rely only on landfill gas as fuel to produce 'green power' which Region 2 refers to as 'dependence.' Id., p. 4.

Region 2 again disregarded the only relevant evidence derived from the contracts examined; namely, the omission of any contract 'feature' authorizing OCLC to exercise control over the LFGTE Facilities and their emission units or authorizing MRPC to exercise control over the OCLC SWF and its emission units. To the extent that language in the Statement of Basis and/or the draft Part 71 Permit may state or infer differently, MRPC was not, and is not, authorized to control the flares at the SWF which are exclusively owned and operated by OCLC. Nor are the LFGTE Facilities 'activities of the landfill' as mischaracterized by Region 2. In fact, OCLC has sufficient permitted flaring capacity to manage all landfill gas collected at its landfill and is in no way reliant on the LFGTE Facilities for such a purpose.

Moreover, in referring to contract features as indicia of 'a control relationship' Region 2 overlooks the dispositive evidence of no common control demonstrated by the fact that the relationships between OCLC and MRPC and their respective facilities are governed by contract terms which were freely negotiated by unrelated companies with equal bargaining power and,

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[9]In its recitation of history, Region 2 claims incorrectly that OCLC's parent once owned the engines at the newer of the two LFGTE Facilities. In fact, they were purchased by MRPC's parent. See Attachment C.

[10]In fact, Region 2 did not even adhere to the dictionary definition of 'control' set forth in the Spratlin Letter.

again, no one of which states or even implies that one contracting party shall have control over the facilities and emission units owned and operated by the other.

In sum, Region 2's pivotal common control decision is contrary to the intent and plain language of the CAA and implementing EPA regulations which authorize the grouping of emission sources for single source permitting only if they are in fact under common control of the same person. 42 U.S.C. 7661; 40 C.F.R. 70.2, 71.2. Its decision disregards relevant evidence demonstrating that no such findings can be made with respect to the OCLC SWF and MRPC LFGTE Facilities. Instead, the decision relies on irrelevant matters, factual mischaracterizations, subjective opinions and unexplained theories as to the nature of their relationships.

Such a decision is not sustainable even under the deferential standards of review afforded EPA actions. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc,. 467 U.S. 837, 842-3 (1984) (an agency's interpretation of its governing statute that is inconsistent with Congress' expressed intent is not entitled to judicial deference and will not be upheld); see also, Auer v. Robbins, 519 U.S. 452, 461 (1997) (an agency interpretation inconsistent with its regulations is entitled to no deference and will not be upheld); Michigan v. EPA, 135 S. Ct. 2699, 2706 (2015) (agency decisions must be based on and may not disregard relevant evidence); see Summit Petroleum Corp. v. USEPA, 690 F.3d 733 (6th Cir. 2012).

(2) Improper Reliance on Functional Relationship

As shown above, Region 2's decision to treat OCLC's SWF and MRPC's LFGTE Facilities as a single source for Title V permitting (or any other CAA purpose) is not supported by evidence of common control as required by the CAA and EPA regulations. These facilities and their emission units are not under common control of the same person as required to be treated as a single source. In fact, Region 2 disregarded the indisputable evidence of no common control. In the final analysis, its decision to combine the OCLC SWF and MRPC LGTE Facilities as a single source, nonetheless, rests on functional relationship considerations. This is impermissible as a matter of law as shown below.

The fact that Region 2 relied on a legally impermissible functional relationship test is clearly signaled by its reliance on negotiated "features of the relationships between [OCLC] and MRPC" as indicative of 'a common control relationship" and "control relationships" between the OCLC SWF and MRPC LFGTE Facilities. Common Control Letter, at fn7, p. 4 (emphasis added). Region 2's incorrect characterization of the LGTE Facilities as 'companion' to OCLC's SWF and 'a landfill operation' further reveals a decision on single source permitting that is not based on any objective facts showing common control.

Instead, Region 2's determination merely expressed in descriptive terminology its subjective view of functional relationships. Region 2's primary if not exclusive focus was on the means by which a regulated pollutant, namely, landfill gas, is managed at the SWF and used at the LFGTE Facilities. While this may be indicative of a functional relationship, it is not common control. Region 2's use of a functional relationship test to overcome the absence of, and in lieu of, the requisite common control is further illustrated by its emphasis on MRPC's reliance on landfill gas as fuel and characterization of this choice as 'dependence.' See Common Control Letter, at

p. 4. Use of such a test is confirmed by the fact that Region 2 did not identify any common controller, and disregarded facts showing that the OCLC SWF and MRPC LFGTE Facilities do not have a common owner or operator which should have been deemed dispositive as to the absence of common control.

As a matter of law, however, functional relationship considerations may not be relied upon in determining whether emission sources may be treated as a single source, much less to circumvent the requisite finding of common control. As indicated above, in order to treat emission sources as a single source for Title V permitting, and for PSD and NSR purposes, the CAA plainly requires a finding that they are "under common control." 42 U.S.C. 7412, 7661, 7472. EPA's implementing regulations are also unambiguous in requiring the following three findings: (1) the sources are in the same major two digit SIC category; (2) they are located on contingent or adjacent properties; and (3) they are "under common control of the same person (or persons under common control)." 40 C.F.R. 70.2, 51.11(a)((5), 51.165(a)(ii); 51.166(a)(5)(6); 70.2, 71.2.

Functional relationship is obviously not one of the three regulatory criteria and may not therefore be used at all in making single source determinations. In adopting the three criteria for use in defining a single source for the PSD program, EPA expressly rejected inclusion of a criterion allowing for functional relationship considerations, making it clear that the SIC criterion alone would be used to ensure that only related activities would be joined as a single source. 45 Fed. Reg. 52,695 (Aug. 7, 1980). In doing so, EPA recognized that "assessing whether activities were sufficiently related functionally to constitute a single source would be highly subjective." Ibid. EPA added that "[t]o have merely added function to the proposed definition as another abstract factor would have reduced . . . predictability . . . under the definition dramatically, since any assessment of functional interrelationships would be highly subjective." Ibid. For these same reasons, EPA explicitly rejected using functional dependency. Ibid.

The three criteria for single source determinations adopted by EPA for the PSD program are the same criteria EPA adopted for single source permitting, and they are intended to be applied consistently. See Common Control Letter, p. 2, fn. 2. Accordingly, there is no regulatory basis for Region 2's reliance on MRPC's choice to use only landfill gas or on any of the other 'features' relied upon in the Common Control Letter. Such features are duly negotiated contract terms for the sale, purchase, delivery and uses of landfill gas that, as in any commercial transaction, define by agreement how the contracting parties will function with respect to the matters addressed in their contract. These may well be features of a functional relationship but they are not evidence of common control. Such features are the very considerations that EPA expressly intended to exclude in making single source determinations. 45 Fed. Reg. 52,695 (Aug. 7, 1980).

In a 2012 decision on point, the 6th Circuit Court of Appeals held that EPA may not use a functional relationship test to decide whether to treat emission sources as a single source where it expressly rejected use of such a test when the three criteria to be used in making single source determinations were adopted. Summit Petroleum Corp. v. USEPA, supra. The Court in effect found that reliance on functional considerations on a case-by-case basis is a de facto amendment to the rule as adopted in violation of the rule-making requirements of the Administrative Procedure Act, 5 U.S.C. 706(2)(A). Id., at 740-743. This decision is binding in all EPA Regions

pursuant to EPA's regulation at 40 C.F.R. 56.3 requiring regional consistency. Nat'l Environmental Dev. Assoc. Clean Air Project v. EPA, 752 F.3d 999 (D.C. Cir. 2014).

While the specific issue addressed in the Summit case was EPA's reliance on a functional relationship test in applying (and actually in an effort to avoid) the adjacency criterion, the Court's ruling applies with the same force and effect to invalidate Region 2's reliance on such a test in applying (and here too to avoid) the common control criterion. As the Court noted, and as shown above, when EPA adopted the three criteria, it categorically rejected the addition of such a test leaving no room for doubt that the rejection foreclosed its use in deciding the application, or not, of the criteria adopted. Summit Petroleum Corp. v. USEPA, supra.

Furthermore, functional relationships are not common control, particularly not where the relationship is defined by contracts freely negotiated by unrelated parties that have no terms authorizing control over the other company's facilities. Such relationships, however beneficial to the parties, cannot lawfully be used as satisfying the finding of common control required expressly, and unambiguously, by the CAA and EPA regulations. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra, 467 U.S. at 842-3; Auer v. Robbins, supra, 519 U.S. at 461; Michigan v. EPA, supra, 135 S. Ct. at 2706; Summit Petroleum Corp. v. USEPA, supra.

VI UNAUTHORIZED PERMITTEE DESIGNATIONS[11]

As directed by Region 2's Order, OCLC and MRPC filed separate Part 71 Permit applications. Each proposed permit requirements applicable only to the facilities and emission units they own and operate. As shown below, Region 2 has no legitimate basis for rejecting their separate applications, proposing a single Part 71 Permit with 'permit-wide' conditions and 'source-wide' requirements applicable to both the SWF and LFGTE Facilities and designating OCLC and MRPC each as Permittees with respect to all such conditions. See 40 C.F.R. 71.5(a).

OCLC objects to being a Permittee with respect to requirements in the draft Permit, including the 'source-wide' testing, monitoring, record-keeping and compliance reporting, related to the MRPC LFGTE Facilities and their emission units. Because OCLC does not own or operate the LFGTE Facilities and their emission units, OCLC has no ability to comply with such permit conditions, and no ability to prevent MCPC's noncompliance. Nor can OCLC designate any Responsible Official able to certify to the truth or accuracy of any such information as it pertains to the MRPC Facilities and emission units. See 40 C.F.R. 71.2.

It obviously would be an abuse of discretion for a regulatory agency to impose permit conditions holding a person with no ability to control an emission source and its emission units accountable for their compliance and liable for any non-compliance by the only person able to control compliance. In addition to objecting to Region 2's attempt to impose such joint and several

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[11]None of the comments herein and in the technical comments in Attachment A relating to conditions in the draft Part 71 Permit may be construed or relied upon as a waiver of OCLC's objections to Region 2's common control determination, treatment of its SWF as a single source with the MRPC LFGTE Facilities for CAA purposes, and proposal to issue a Part 71 Permit.

liability, OCLC objects to having its ability to provide uninterrupted disposal services to its ratepayers depend on the compliance of an unrelated company with respect to emission sources and emission units owned and operated by that company and not OCLC. This would not only be an untenable liability risk for OCLC; it would be grossly unfair to its SWF customers who depend on uninterrupted disposal services, and it would unreasonably threaten the health of those residing in communities where the waste is collected.

OCLC also objects to MRPC being named as a Permittee with respect to the OCLC SWF and emission units at the SWF exclusively owned and operated by OCLC. As stated at the outset of these comments, OCLC, as a regulated public utility with an A-901 License to protect, may not share a permit to operate any aspect of its SWF with an unlicensed party such as MRPC.

Furthermore, such Permittee designations and 'permit-wide' conditions are in violation of the CAA. Naming OCLC as a Permittee with respect to emission sources and emission units owned and operated exclusively by MRPC, and naming MRPC a Permittee with respect to the OCLC SWF and its emission units owned and operated exclusively by OCLC, is in conflict with and not enforceable under the CAA. Throughout the CAA, in plain and unambiguous language, Congress made it clear that only the "owner or operator" is responsible for obtaining permits and approvals necessary to operate a source and its emission units, and only the "owner or operator" can be held accountable for compliance with permit conditions. See e.g., 42 U.S.C. 7475(a)(3), (7), 7479(2)(A), 7661(b)(ii), 7661a(a), 7661b(c), (b)(3)(A), (c), 7661d(c)(i)(A), 7661f(c)(1)(A).

EPA implementing regulations are in accord. They plainly and unambiguously state that only the "owner or operator" of an emission source has the "[d]uty to apply" for a Part 71 Permit. See 40 C.F.R. 71.5(a); see also 40 C.F.R. 51.165(a)(5)(i), (6)(iii), (iv), (v). New Jersey's Title V Program regulations also clearly state that only the "owner or operator" of an emission source is obligated to apply for and secure an operating permit. See e.g., N.J.A.C. 7:27-22.2, 22.3. As indicated above, an "owner or operator" is the "person who owns, leases, operates, controls, or supervises a stationary source." 40 C.F.R. 66.3(b). As the facts enumerated above demonstrate, this is OCLC in the case of the SWF, and MRPC in the case of the LFGTE Facilities.

In short, Region 2 is not authorized to force OCLC to be a Permittee with respect to the MRPC LFGTE Facilities and their emission units because, as shown above, OCLC is not their "owner of operator." Likewise, Region 2 is not authorized to force MRPC to be a Permittee with respect to the OCLC SWF and its emission units because, as shown above, MRPC is not their "owner or operator." It follows that the reverse is true as well. Region 2 is not authorized to condition approval of an owner/operator's application for a Title V permit on the willingness of a non-owner/operator to assume joint and several liability for compliance, or on the applicant's willingness to accept a non-owner/operator as a Permittee.

Nor can the proposed designations of both MRPC and OCLC as Permittees be justified by reference to Region 2's determination on common control. It is not the regulator's prerogative to say who shall be the "owner or operator" of an emission source. Region 2's claim that there is an unexplained 'common control relationship' between OCLC and MRPC does not alter the fact that OCLC is the owner and exclusive operator of the OCLC SWF and its emission units and

MRPC is the owner and exclusive operator of the MRPC Facilities and their emission units and neither company has decided otherwise.

Accordingly, separate and apart from Region 2's flawed determination to require a single Title V Permit, as shown by the statutory and regulatory provisions cited above, neither OCLC nor MRPC can be forced to be a Permittee with compliance obligations as to the facilities and emission units they neither own nor operate. Nor can OCLC be compelled to accept MRPC as a Permittee with respect to any permit conditions applicable to the operation of its SWF and emission units.

Thus, even if Region 2 could pursue a single Part 71 Permit for their facilities, the proposal to name both OCLC and MRPC as Permittees with 'permit-wide' and 'source-wide' compliance obligations would be objectionable. Consistent with unambiguous rights under the CAA and EPA implementing regulations, all permit requirements and conditions must be allocated such that OCLC is a Permittee and responsible for compliance only as to permit requirements pertaining to the OCLC SWF and its emission units and MRPC is a Permittee and responsible for compliance only as to permit requirements pertaining to the MRPC LFGTE Facilities and their emission units.

VII ARBITRARY AND CAPRICIOUS REGULATION

(1) Objectionable Decision-Making Process

There are, of course, limits to regulatory agency powers even under the deferential standards for review set forth in Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., supra, 467 U.S. at 842-3. Regulatory actions by EPA and its Regional Offices must be consistent with the plain language of applicable provisions of its enabling statute and duly adopted implementing regulations. Ibid; Auer v. Robbins, supra, 519 U.S. at 461. Interpretations where necessary, and their application, may not be arbitrary, capricious or unreasonable. 5 U.S.C. 706(2)(A). An agency's decision must be based on, and may not disregard, relevant facts. Michigan v. EPA, supra, 135 S. Ct. at 2706. There must be a rational connection between the facts found and the agency's decision. Summit Petroleum Corp. v. EPA, supra, 690 F.3d at 741.

OCLC has previously submitted comments to Region 2 objecting to its 'case-by-case' decision-making process with respect to the pivotal issue of common control, as well as the result. These submissions are incorporated and relied on herein in support of OCLC's comments objecting to Region 2's decision to issue a Part 71 Permit and revoke OCLC's Part 70 Permit. They support OCLC's objections in this submission to terms of the proposed Part 71 Permit and in particular to the designation of OCLC and MRPC as 'permit-wide' Permittees with 'source-wide' permit obligations. The comments immediately below are supplemental process objections. As demonstrated, the case-by-case process used by Region 2 to reach its decision on common control was transparently arbitrary and capricious. The result was an arbitrary and capricious determination and now an arbitrary, capricious and unreasonable permit proposal.

This matter began with Region 2's failure to give due notice of the definition of common control it would be using, while placing the burden on OCLC and MRPC to prove otherwise. See Common Control Letter, p. 3. This burden was imposed as a result of an invalid presumption of

common control based on the location of the MRPC LFGTE Facilities adjacent to the OCLC SWF. In relying on this presumption, Region 2 failed to acknowledge the existence of the MRPC leases and their relevance in providing evidence of no common control at least sufficient to overcome any presumption to the contrary.[12]

Moreover, as shown in the Common Control Letter, Region 2's determination on common control was not based on evidence that the OCLC SWF and MRPC LFGTE Facilities are, in fact, under common control of the same person as required by the CAA and EPA regulations. Relevant evidence demonstrating no such control was disregarded. Instead, Region 2 based its determination on its opinion that the OCLC SWF and MRPC LFGTE Facilities have a 'common control relationship' or 'control relationship,' and did so without providing any explanation as to what it meant by such characterizations, or what control was being exercised, or by whom. Common Control Letter, fn7, p. 4. As shown above, Region 2 relied on 'features' of the OCLC and MRPC relationship that were in some instances mischaracterized. Furthermore, all are terms agreed upon by the contracting parties regarding the sale, delivery, purchase, compensation for and use of landfill gas, rights to the unused gas, and remedies in the event of breach, and no term authorized any operational control over the facilities and emission units owned by the other.

In fact, while purporting to be a determination of common control, no person with common control was identified in the Common Control Letter, as required by the CAA and EPA regulations. 42 U.S.C. 7661; 40 C.F.R. 70.2, 71.2 (a major source for Title V permitting purposes must be "under common control of the same person (or persons under common control)"). Region 2 acknowledged that OCLC and MRPC are not related companies. The fact that OCLC is the exclusive operator of the SWF and the fact that MRPC is the exclusive operator of the LFGTE Facilities was not mentioned or disputed. No attempt was made to reconcile the inconsistency in finding such separately owned and operated facilities under common control.

There is only one explanation for Region 2's reliance in the Common Control Letter on contract terms and the sale/purchase of landfill gas and its disregard for OCLC being the exclusive owner/operator of the SWF and MRPC being the exclusive owner/operator of the LFGTE Facilities --- Region 2 was relying on an impermissible functional relationship test. Without notice or statutory or regulatory authority, it engaged in exactly the arbitrary and capricious decision-making process culminating in an unpredictable and wholly subjective result anticipated when EPA rejected such a test. 45 Fed. Reg. 52,695 (Aug. 7, 1980).

As shown below, terms of the draft Part 71 Permit meant to implement such a determination are similarly objectionable.

(2) Unreasonable Compliance Obligations

As repeatedly stated herein, OCLC objects to the proposal to issue a single Part 71 Permit imposing undifferentiated 'permit-wide' compliance obligations on OCLC and MRPC. The purpose and effect would be to make each accountable for the other's compliance, and jointly and severally liable for any non-compliance, with respect to permit conditions applicable to the

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[12]See fn8, supra.

operation of facilities and emission units they neither own nor operate. In addition to being unauthorized and foreclosed as a matter of law as shown above, such a proposal is on its face arbitrary and unreasonable. For one, as to the facilities and emission units they do not own or operate, neither can designate a 'Responsible Official' as required by 40 C.F.R. 71.22. Nor can either certify to the truth and accuracy of monitoring results or information in compliance reports regarding the other's emissions and emission units as required by EPA forms.

Of major significance, neither has the ability to force compliance or prevent non-compliance with permit conditions applicable to facilities and emission units they do not own or operate. Also of particular concern to OCLC is the fact that its ability to ensure uninterrupted solid waste disposal services to the communities and residents of Ocean County would depend on MRPC's compliance, a matter over which OCLC has no control. For Region 2 to demand accountability for compliance and liability for non-compliance, nonetheless, as proposed by the terms of the draft Part 71 Permit and Permittee designations, would be grossly unreasonable.

EPA has recognized that a person who is not the owner or operator of an emission source cannot assure compliance or force a remedy for non-compliance and, therefore, cannot reasonably be held accountable for doing so. Sierra Club v. EPA, 496 F.3d 1182 (11th Cir. 2007). The same reasoning applies in this case. If a Part 71 Permit were to be issued, it would be patently unreasonable not to clearly distinguish between conditions and requirements pertaining to the SWF and its emission units and conditions and requirements pertaining to the LFGTE Facilities and their emission units, and allocate separate permittee responsibilities to OCLC and MRPC accordingly.

(3) Capricious and Discriminatory Regulation

The terms of the proposed Part 71 Permit designed to treat the emission source and units owned and exclusively operated by OCLC as though part of a single source that includes the emission sources and emission units owned and exclusively operated by MRPC, and to require that OCLC assume joint and several liability for any non-compliance by MRPC, in addition to being unauthorized by the CAA, represent capricious and discriminatory regulation. Such permit terms are arbitrary and capricious, for one, because they rely on Region 2's common control decision which is arbitrary and capricious in that it purports to be a common control determination but in fact relies impermissibly on functional relationships. Summit Petroleum Corp. v. EPA, supra, 690 F.3d at 741 (to be reasonable, there must be a rational connection between the facts relied on and the decision made.)

Moreover, the predicate determination on common control was a case-by-case decision not based on any fixed standards that would ensure a non-arbitrary and equitable result. Examples of capricious unpredictability include requiring OCLC and MRPC to disprove common control, which they did, while Region 2 relied unlawfully on functional relationships. Another example is Region 2's reliance on MRPC's choice to use only landfill gas as fuel, Common Control Letter, p. 4, when in a recent rule-making proceeding EPA acknowledged that "exclusive interdependence" is a functional relationship, not an indicator of common control. 80 Fed. Reg. 56581 (Sept. 18, 2015). Yet another example is EPA's reliance on functional relationships when

in adopting the criteria for single source determinations such a test was rejected because the result would be unpredictable and too subjective. 45 Fed. Reg. 52695 (Aug. 7, 1980).

Also as EPA noted in a recent rule-making proceeding, pursuant to the direction of the Court in Alabama Power v. Costle, 636 F.2d 323, 387 (D.C. Cir. 1979), the single source resulting from any combination of emission sources must be consistent with a "common sense notion of a [single] plant." 80 Fed. Reg. 56581 (Sept. 18, 2015). In this case, Region 2 has combined facilities owned and operated by unrelated companies conducting disparate businesses based on contractual relationships pertaining to the sale of one's by-product to the other for the latter's use as fuel for its engines. This is not a common sense notion of a single plant. To the contrary, it is a common sense example of unaffiliated companies doing business with each other.

The lack of consistency shown above, in addition to being indicia of an unsupported, capricious decision on common control, signals regulatory discrimination in violation of EPA's policy requiring all decisions by its Regional Offices to be "fair and uniform." 40 C.F.R. 56.3(a). In this regard, as EPA is well-aware, landfill gas from landfills throughout the nation is being beneficially used to generate electric power. Many of these landfills continue to operate under their own, separate Part 70 Permits issued by their respective States without any objection by the relevant EPA Regional Office. Some may be in Pennsylvania or close to a rail line and, thus, may be competitors of OCLC. To force OCLC to bear the enhanced costs anticipated by the proposed Part 71 Permit, is prejudicial and discriminatory.

To rely on case-by-case decision-making begs the question: why have the OCLC SWF and MRPC LFGTE Facilities been subjected to such scrutiny while others apparently have not? Also, why was a functional relationship deemed sufficient to require permitting as a single source whereas actual common control apparently has been required in other Regions? A regulatory policy adopted by EPA states that it will "[p]rovide mechanisms for identifying and correcting inconsistencies by standardizing criteria, procedures, and policies being employed by Regional Office employees in implementing and enforcing the [CAA]." 40 C.F.R. 56.3(b). So long as this has not occurred, which apparently it has not, revocation of OCLC's Part 70 Permit and issuance of the proposed Part 71 Permit is by definition capricious and discriminatory.

To ensure no mistaken impression, OCLC IS NOT suggesting that all landfills and LFGTE facilities with contracts providing for the sale and purchase of landfill gas should be under a single Title V permit, considered a single source for PSD and NSR purposes, and held jointly and severally liable for non-compliance by the other. For all of the reasons stated herein, it should be clear that OCLC opposes such permitting decisions where, as in this case, the facts prove no common control. The salient point is: it is arbitrary, capricious and unreasonably discriminatory to regulate OCLC's SWF in the unlawful, unreasonable and costly way indicated in the draft Part 71 Permit while other similarly situated landfills selling gas are regulated reasonably and, thus, are operating under Part 70 Permits with requirements and conditions applicable only to the emission sources and emission units they own and operate.

(4) Unreasonable Costs/Business Risks

Congress has obviously not authorized EPA to dictate which companies must own and operate emission sources. It also states the obvious to say that Congress has not authorized EPA to decide

that unrelated companies must combine their operations through a merger or acquisition. Such decisions are understood to be the prerogative of a company's management, subject to the approval of its owners. EPA's role is to regulate the outcome as it affects air quality.

It is no more plausible to assume that Congress intended EPA to be making and enforcing decisions that impose more expansive CAA requirements with their attendant costs, and uncontrollable liability risks, based on what is, in effect, a fictitious merger contrived for such a purpose by unauthorized regulatory action. To the contrary, the 'under common control of the same person' statutory and regulatory criterion was understood from the outset to limit EPA's authority to combine only those emission sources under the control of the same company or affiliated companies. This understanding is clearly indicated by the statutory language and regulatory definitions cited above, and by the language used by the Court in Alabama Power v. Costle, supra, 636 F.2d at 387 ("considerations such as . . . ownership"), language used by EPA and endorsed by that Court ("owned and operated by the same person"), see 44 Fed. Reg. 52676 Aug. 7, 1980; and EPA's reference to "commonly owned units" at 80 Fed. Reg. 56581 (Sept. 18, 2015).

In U.S. v. Bestfoods, 524 U.S. 51, 62 (1998), the United States Supreme Court ruled that even the corporate veil of a parent corporation may not be pierced by a regulatory agency such as EPA without explicit, unambiguous statutory authorization from Congress. Clearly then, the corporate veils of unrelated companies such as OCLC and MRPC cannot be 'pierced' by Region 2 to change their status as the exclusive owners and operators of the OCLC SWF and MRPC LFGTE Facilities, respectively. Stated another way, Region 2 may not regulate their independently owned and operated facilities as though they are in fact a merged company in order to hold each jointly and severally liable for the other's compliance with Title V permit conditions. Ibid.

Yet this is precisely the intent of the objectionable, unallocated conditions and requirements of the draft Part 71 Permit and designation of both OCLC and MRPC as 'permit-wide' and 'source-wide' Permittees. Region 2 is proposing to in effect 'pierce' their corporate veils and through regulatory fiat achieve a fictitious merger by combining their emission sources for Title V permitting purposes. This will force OCLC to incur higher costs for CAA compliance and assume joint and several liability for any uncontrollable non-compliance by MRPC. Common Control Letter, pp. 4-5. Nowhere in the CAA has Congress authorized such regulatory power. To the contrary, Congress has clearly stated, and EPA's regulations clearly acknowledge, only sources that are in fact under common control of the same person may be combined for permitting as a single source. 42 U.S.C. 7661a; 40 C.F.R. 71.2.

The unreasonable costs and business risks of such unauthorized regulatory action cannot be overstated. No longer would OCLC's CAA obligations and permit requirements be commensurate with the size, nature and risks of its SWF business alone. Instead, OCLC's costs for compliance with the CAA will be greater solely as a result of Region 2's unauthorized regulatory merger of its SWF with MRPC's LFGTE Facilities.[13] Business risks, and thus

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[13] EPA has acknowledged that the typical effect of combining emission sources is higher costs to satisfy NSR and PSD requirements including costs for offsets. 80 Fed. Reg. 56585 (Sept. 18, 2015). EPA has suggested that there may be an offsetting benefit (footnote con'd on next page)

potential liability costs, will be far greater due to joint and several liability for MRPC's compliance without an ability to prevent non-compliance. Ultimately, such liability would create an uncontrollable risk that services to the customers of OCLC's SWF may be interrupted or terminated.

In the final analysis, Region 2 appears to be deciding the CAA obligations of OCLC and MRPC, not based on the reality that they are unaffiliated companies with no common control over each other's facilities or emission units, but based on the prism of its own regulation of the pollutant landfill gas. However, responsibilities with respect to the control and management of landfill gas are the result of CAA requirements and permitting by State and federal regulators. In other words, the regulators are the common controllers with respect to the landfill gas. Such regulation cannot lawfully or reasonably be relied upon to create common control by either of the private companies whose activities are being regulated where they have not agreed to such control.

(5) Adverse Public Policy Impacts

The adverse reach of Region 2's common control determination and the proposed terms of the proposed Part 71 Permit goes well beyond the discriminatory and unreasonable costs/risks that would be imposed on OCLC and the ratepayers who depend upon its solid waste disposal services. For one, it discourages any voluntary cooperation in managing a regulated pollutant by the owners of emission sources not under common control where Region 2 claims discretion to characterize any such cooperation as indicia of 'a common control relationship' and use such a description as a basis for treatment as a single source.

Moreover, LFGTE initiatives by companies such as MRPC that are in the business of generating 'green power' depend on the willingness of landfill owners to sell their gas by-product. Such sales are clearly discouraged by an EPA permitting decision that presumes common control when such a facility locates on a leasehold adjacent to its source of fuel, and asserts authority to combine and regulate the landfill's emission units with the purchaser's as one source thereby increasing costs for compliance with the CAA, and creating joint and several liable for any non-compliance by the purchaser which the landfill owner has no ability to prevent. Any landfill owner would think twice about selling landfill gas if it means being exposed to such unreasonable regulation, higher costs and uncontrollable risks. And, the costs to the purchaser could be prohibitive.

Such disincentives conflict with federal and State environmental and energy policies meant to encourage and promote reliance on renewable energy sources such as landfill gas. Its use as fuel to generate electricity is favored because it displaces the use of fossil fuels and, in doing so,

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(footnote con'd from previous page) where single source treatment enables 'netting out'; that is, an ability to offset new costs by retiring or installing more efficient emission units elsewhere at the combined source. Ibid. This, however, assumes that the new and existing emission units are under common control. The benefit is elusive where the sources are not in fact under common control and the company proposing to expand is not the same company owning the older emission units. Each will have a fiduciary duty to different owners preventing the cost-benefit analysis that might lead to 'netting out.'

contributes to energy self-sufficiency goals and reduces greenhouse gases. According to information on the website of EPA's Landfill Methane Outreach Program (LMOP), the use of landfill gas as fuel reduces emissions of SO2, NOx, PM and CO2. Because of the environmental benefits achieved, EPA's LMOP has been one of the more active advocates for the beneficial use of landfill gas in general and for LFGTE projects in particular. Such projects have also received financial incentives over the years both at the federal and State levels to encourage their development and assist in assuring their economic viability.[14]

In light of the above, Region 2's press to have higher costs for CAA compliance and uncontrollable liability risks imposed as a price to be paid for contracting for the sale of landfill gas from the OCLC SWF to a company such as MRPC that uses landfill gas as fuel to generate 'green' power, is not only unauthorized in law and arbitrary and unreasonable. It is decidedly poor public policy.

In any regulatory matter, the exercise of sound judgment requires consideration of consequences. Michigan v. EPA, 135 S. Ct. 2699, 2708 (2015). In this case, from an environmental, energy and public policy point of view, the more reasonable course is the course mandated by law. The common control decision should be reversed, the Order to apply for Part 71 Permits should be rescinded, and the separate Part 70 Permits issued by NJDEP to OCLC and MRPC should remain in force and effect.

VIII TECHNICAL COMMENTS[15]

OCLC comments regarding technical requirements and conditions in the proposed Part 71 Permit are presented in the graph annexed hereto as Attachment A. They include objections and an identification of changes that would be necessary even if permitting as a single source were authorized. Four matters are also addressed in the comments below.

(1) 'Source-wide' Permit Requirements

OCLC's reasons for objecting to its SWF being treated as a single source with the MRPC LFGTE Facilities, and for objecting to Region 2's unauthorized 'permit-wide' conditions that would force OCLC and MRPC to be Permittees with respect to the other's facilities and emission units, apply with equal force to the so-called 'source-wide' requirements in the draft Permit. They, too, are objectionable where OCLC is not the owner or operator and does not have any ability to enforce

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[14]As the record shows, the first MRPC LFGTE Facility was subsidized by favorable rates in a power purchase agreement with a public utility approved by the New Jersey Board of Public Utilities (NJBPU). MRPC received a grant from the NJBPU Clean Energy Program for development of the newer LFGTE Facility. Tax credits have been available first to the seller of the landfill gas, and then to MRPC for using the landfill gas to generate 'green power.'

[15] It bears emphasis, again, that the comments submitted by OCLC on proposed conditions in the draft Part 71 Permit are without prejudice to its position that there is no common control justifying treatment of its SWF as a single source with the MRPC LFGTE Facilities and Region 2's issuance of a Part 71 Permit and revocation of the Part 70 Permits issued by the NJDEP.

MRPC's compliance with requirements applicable to the LFGTE Facilities and their emission units. They are objectionable, as well, where MRPC does not have, and cannot exercise, control over the SWF or its emission units.

As stated above, in addition to being unauthorized by the CAA and EPA regulations, it is grossly unfair to impose permit conditions where compliance is not possible or controllable. Accordingly, even if single source treatment were permissible, 'source-wide' testing, monitoring, record-keeping and reporting requirements proposed in the draft Part 71 Permit should be deleted. Any such requirements not otherwise objectionable 'gap-fillers', see below, need to be specifically allocated so that only the owner/operator is responsible for requirements applicable to a particular facility and its emission units. This means an allocation to OCLC only with respect to the SWF and its emission units, and an allocation to MRPC only with respect to the LFGTE Facilities and their emission units. Because it is "easier" for a regulator to have such information combined is not a basis for imposing permit obligations that are unreasonable and impossible to satisfy.

(2) 'Gap-fillers'

The so-called 'gap-fillers' are objectionable for multiple reasons. Some are technically unreasonable as shown in the technical comments annexed as Attachment A. They all are objectionable on jurisdictional grounds insofar as they propose testing, monitoring and record-keeping requirements that go beyond requirements of the Part 70 Permits and do so without cause. As Region 2 is aware, permitting is the primary responsibility of the State. 42 U.S.C. 7401(a)(3). From the outset, Region 2 has represented that the sole cause for initiating an action to revoke and replace the Part 70 Permits issued by the NJDEP is implementation of its determination on common control. Where the determination on common control is unsustainable so too is any replacement/revocation of the Part 70 Permits. Even if a Part 71 Permit were to issue, no cause has been stated to justify 'gap-fillers' which are not necessary to implement a common control determination. 40 C.F.R. 71.7(f)(2).

Moreover, the 'gap-fillers' are independently objectionable because they are arbitrary and unreasonable. There is no justification for imposing costly testing, monitoring, record-keeping and reporting burdens which go beyond requirements of the Part 70 Permits issued by the NJDEP. Nothing in the regulations cited by Region 2 in its Statement of Basis, or in the draft Permit, compel such greatly enhanced operational requirements and costs. The CAA and the cited regulations simply require sufficiently reliable and timely information for determining compliance with permit conditions. See 42 U.S.C. 7661c(b), (c); 40 C.F.R. 71.6(a)(3(i)(B) and (c)(1); Statement of Basis, p. 24, fn33. Conditions of the Part 70 Permits satisfy this requirement and Region 2 has no basis for suggesting otherwise.

To the contrary, NJDEP decided that the testing, monitoring, reporting and record-keeping terms in the Part 70 Permits are sufficient for determining compliance with permit conditions when the terms were approved and included in those Permits, and Region 2 tacitly concurred when it reviewed the terms and voiced no objection. In not objecting to the terms of the Part 70 Permits when issued, and in acknowledging that the 'gap-fillers' now being proposed for inclusion in the draft Part 71 Permit are not required by EPA in approved State Title V programs, Region 2 cannot

reasonably claim that they are necessary to ensure permit compliance or to protect public health and the environment.

Accordingly, all 'gap-fillers' should be deleted from any Part 71 Permit issued. There is no legitimate purpose shown or to be served by imposing such burdensome activities and their attendant costs on OCLC and, ultimately, the communities and residents of Ocean County, New Jersey, that are OCLC's customers. Doing so nonetheless would be arbitrary and unreasonable and an abuse of regulatory power. Summit Petroleum Corp v. USEPA, supra, 690 F.3d at 740; 5 U.S.C. 706(2)(A).

(3) Portable Non-road Engines

Region 2's rejection of OCLC's position that its RICE generators are not stationary sources is in error and should be reversed. They qualify as non-road engines under the applicable EPA rule because they are portable and will not remain at any single location at the SWF for 12 months or more. 40 C.F.R. 1068.30 (1) (iii). This position is in accord with the terms of the rule which defines a "location" as "any single site at a . . . facility." Ibid. It is consistent with Region 5's applicability determination cited in the Statement of Basis, p. 28, fn 38, wherein Region 5 advised that mobile engines not remaining at any one site at a facility for 12 months or longer are to be treated as non-road and not regulated as stationary sources.

Region 2's decision to view 'location' differently, that is, not as "any single site at a . . . facility," 40 C.F.R. 1068.30 (1) (iii) (emphasis added), but as the entire SWF, is inconsistent with the explicit terms of the rule, and Region 5's application thereof. Notwithstanding a 'case-by-case' determination, the terms of the rule are controlling. Auer v. Robbins, supra, 519 U.S. at 461 (agency interpretations may not be inconsistent with the plain language of a regulation). Region 2's determination is unlawful because it assumes an unauthorized discretion to fix the boundaries of the relevant 'location' and do so in a manner contrary to the rule which defines location as the site at a facility where the engines in question are used. Ibid. Its deviation from Region 5's application of the rule also conflicts with EPA's policy to ensure that rules are uniformly, and thus fairly, applied. 40 C.F.R. 56.3(a), (b).

Contrary to Region 2's claim, there are no factual differences justifying its deviation from Region 5's determination. The relevant qualifying facts are identical; namely, the engines are portable and they will not remain at any single location at the permittee's facility for 12 months or longer. Region 2's rationale that grouping the SWF with the LFGTE Facilities as a single source for Title V permitting enables it to view the entire SWF as a 'location' at the source where the engines will remain for 12 months or longer, is unavailing sophistry. Statement of Basis, p. 28. For one, it still mistakenly assumes that Region 2 has unfettered discretion to define the boundaries of a location rather than abide by its definition in the applicable rule as the site at a facility where the engine in question is used. 40 C.F.R. 1068(1)(iii).

Moreover, Region 2 cannot have it both ways. In claiming that the SWF and LFGTE Facilities are a single source for Title V permitting and NSR and PSD purposes, Region 2 has taken the position that they comprise a single facility. See 40 C.F.R. 51,165(a)(1)(i). If the SWF and LFGTE Facilities can rightfully be considered such a single source, then the RICE generators are

not stationary sources because they will not remain at any single location at this 'facility' for 12 months or more. 40 C.F.R. 1068.30(1)(iii). Accordingly, if a Part 71 Permit is to be issued, the conditions treating the 4 RICE generators as stationary sources should be deleted and they should be listed as Insignificant Sources.

Two portable screeners being used at the SWF should also be listed as Insignificant Sources and not regulated as stationary sources. They too will not be used at any single location at the SWF for 12 months or more and, thus, they too qualify as non-road engines. Ibid. NJDEP required their treatment as stationary sources in a recent amendment to OCLC's Part 70 Permit solely because they will remain at the SWF for longer than 12 months. This decision was made after consultation with Region 2 and, as shown above, it misapplies the applicable rule in construing location as the entire SWF.

The Part 70 Permit modification pertaining to the screeners is now before Region 2 along with other recent modifications in OCLC's Part 70 Permit to be included in any Part 71 Permit issued. See OCLC's January 15, 2016 submission. For the reasons set forth above, a correction is needed and the screeners should be included as Insignificant Sources, and not as stationary sources because they too are qualifying non-road engines pursuant to 40 C.F.R. 1068.30 (1) (iii).

(4) Authorized Use of LFG at Boiler

OCLC objects to the proposal in the draft Part 71 Permit to ban use of treated landfill gas at the boiler in its leachate treatment building and require the use of fuel oil only. This rejection of NJDEP's long-standing authorization to use landfill gas should be withdrawn, and the authorization in the Part 70 Permit retained. Revocation is unjustified, for one, where such a ban is not necessary to implement the Region 2's common control determination and permitting as a single source. Thus, the proposed change in a Part 70 Permit condition is jurisdictionally in error. 40 C.F.R. 71.7(f)(2).

Moreover, Region 2 is without authority to challenge such a use at this late date. OCLC obtained preconstruction approval to use landfill gas at the boiler in 1992. Authorization for such a use was included in OCLC's initial Part 70 Title V Permit without any objection from Region 2, and the use of treated landfill gas was the subject of a preconstruction approval and minor permit modification approved by NJDEP in 2006, see BOPO50001, again without any objection by Region 2. Given this history, the authorization may not now be revoked by Region 2. See US v. EME Homer City Generation, L.P., 727 F.3d 274 (3d Cir. 2013).

Moreover, Region 2's refusal to incorporate the NJDEP approved authorization to use landfill gas into the draft Part 71 Permit is arbitrary and unreasonable. Contrary to the inference in the Statement of Basis, OCLC has not arbitrarily refused to monitor treatment of the landfill gas in a required manner. The fact is that the onerous monitoring requirements proposed by Region 2 would make use of landfill gas cost-prohibitive and do so unjustifiably. Contrary to Region 2's rationale for banning such a beneficial use, there is regulatory discretion pursuant to the NSPS to approve such an alternative method of gas management subject to the terms set forth in the Part 70 Permit. See e.g., 40 C.F.R. 60.752(b)(2)(D); 60.754(a)(5)(b)(i)(3), 60.756(d). In fact, Region 2 obviously agreed in not objecting to NJDEP's repeated approvals.

Furthermore, in deciding to reject NJDEP's legitimate exercise of discretion to authorize the use of treated gas at the boiler and to instead require use of fuel oil, Region 2 has banned the more environmentally beneficial option. This decision is contrary to the goals of the CAA, 42 U.S.C. 7401(a)(3), and should be reversed. All conditions in OCLC's Part 70 Permit that authorize and allow use of treated gas at the boiler at the leachate treatment building should be incorporated without change in any Part 71 Permit issued.

IX CONCLUSION

In conclusion, for the reasons indicated above, OCLC continues to oppose having its SWF combined with MRPC's LFGTE Facilities as a single source for Title V permitting purposes or for any other CAA purpose. There is no cause for revoking its separate Part 70 Permit and issuing a Part 71 Permit where, as shown by the indisputable facts enumerated at Section III, above, the SWF owned and operated by OCLC and the LFGTE Facilities owned and operated by MRPC are not 'under common control of the same person' as required by the CAA and EPA regulations for permitting as a single source. Region 2's determination on common control and decision to require permitting of the SWF and LFGTE Facilities as a single source are therefore unsustainable as a matter of law.

To bring this matter into proper perspective, OCLC and MRPC are unrelated companies, OCLC is engaged in the business of solid waste disposal and MRPC is engaged in the business of generating electricity using landfill gas as fuel, neither has any relationship with those using or purchasing the other's services, neither owns or operates the other's facilities or their emission units and neither has authorized or agreed to any common control over their facilities or their emission units. Owners of the OCLC and its related companies did not invest in electric power plants and MRPC's stockholders did not invest in a solid waste disposal operation, and neither authorized or invested in any merger of the two companies or their operations.

To be sure, there is a functional link between the two companies. They have contracts for the sale, delivery and purchase of a SWF by-product, landfill gas, which MRPC uses as fuel for its engines in order to produce 'green power.' MRPC has leased sites for its LFGTE Facilities adjacent to the SWF's leasehold to be closer to and thus lower the cost of its fuel supply. This is a commercial business relationship the parameters of which are spelled out in agreements negotiated at arm's length and entered into voluntarily by unrelated companies with equal bargaining power, no term of which is intended or designed to give control over their facilities or emission units to the other.

As shown above, this functional relationship is not common control by the same person as required by the CAA and EPA regulations to combine emission sources for Title V permitting. In this case, Region 2 has made a determination on common control in the absence of any finding of common control by the same person, and impermissibly relied instead on functional relationship considerations. Region 2's focus appears to be on the fact that OCLC and MRPC are each responsible for managing a pollutant - landfill gas - OCLC by collecting it and flaring that which is not delivered to one of the MRPC Facilities for use as fuel, and MRPC for managing all gas delivered to it for such a use. However, the fact that OCLC's Title V Permit requires it

to manage all gas not delivered to the LFGTE Facilities, and MRPC's Title V Permit requires reliance on the OCLC flares as a back-up for unused gas, makes EPA (and NJDEP) the common controllers. It does not change the indisputable facts demonstrating that OCLC and MRPC are unrelated companies, OCLC is the owner and exclusive operator of the SWF and its emission units and MRPC is the owner and exclusive operator of the LFGTE Facilities.

In sum, Region 2's characterization of their functional relationship as a 'common control relationship' does not and cannot change the indisputable evidence that neither their owners nor the SWF and LFGTE Facilities are under common control of the same person as required for Title V permitting as a single source. It is not plausible that Congress in authorizing EPA to combine emission sources intended enabling EPA to change the business risks of such private corporations and their owners by forcing them to assume joint and several compliance obligations relative to emission sources and emission units which they do not own or operate and, thus, over which they have no control. In fact, Congress did not. The CAA authorizes treatment of emission sources and their emission units as a single source only if they are in fact under common control of the same person, a finding that cannot be made in this case.

Accordingly, OCLC again asks Region 2 to retract its unsustainable common control determination, to rescind its unauthorized Order requiring permitting as a single source and the filing of Part 71 Permit applications for such a purpose, to withdraw the draft Part 71 Permit, and to thereby allow the separate Part 70 Permits issued by NJDEP to OCLC and MRPC to remain in force and effect.

Moreover, even if single source treatment could be justified, the draft Part 71 Permit would need extensive revision as shown above and in Attachment A. Either separate Part 71 Permits would have to be issued or compliance obligations in any single Permit would need to be allocated to the Permittee that owns and operates the emission source and emission units to which they apply. Also, the more recent modifications in OCLC's Part 70 Permit would need to be incorporated, with the screener engines, like the qualifying RICE engines at the SWF, included as insignificant sources and not as stationary sources. A draft Part 71 Permit would need to be republished to enable all interested parties a fair opportunity to comment on the proposed Permit as revised.

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Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

Page	Condition	Brief Description	Concern
	Permit Wide	Permittee	There needs to be an allocation of OCLC and MRPC compliance responsibilities such that each is responsible only for compliance with requirements applicable to the emission units that they own and operate. See OCLC Comments.
	Permit Wide	7:27-8	Reference to NJAC 7:27-8 should be changed to either NJAC 7:27-22 or to a specific OCLC or MRPC Title V Permit Condition (NJAC 7:27-8 are the NJDEP minor source regulations). Both OCLC and MRPC are major sources. The conditions referenced originate from each facility's Title V Operating Permit which is authorized per NJAC 7:27-22.
	Permit Wide	Application Proposed Items	Emission unit changes, landfill gas flow and heat input restrictions and Potential to Emit limitations proposed in OCLC's Part 71 application need to be incorporated in any Part 71 Permit issued to prevent double counting where landfill gas is sent either to the LFGTE Facilities or to the flares.
	Permit Wide		Recent modifications to OCLC's Part 70 Permit approved by NJDEP need to be incorporated into any Part 71 Permit issued. Pursuant to Region 2's instruction, a copy of this Permit has been provided in advance of these Comments. As stated in the cover letter dated January 15, 2016, a correction is needed to treat qualifying portable screener engines as non-road, insignificant sources and not as stationary sources. See also OCLC Comments.
	Permit Wide		All NSPS and NESHAP requirements are being met by the GCCS Plan, SSM Plan, as well as reporting, monitoring and performance testing performed by OCLC. Costly additional requirements cannot be justified. See OCLC Comments.
1	Permit Wide		Replace "Lakehurst Borough" with "Manchester Township". Also, there is no such entity as the "Ocean County Landfill and MRPC Holdings LFGTE Operations." Notably, no person is the owner or operator of any such emission source, and OCLC and MRPC submitted separate permit applications for only those emission sources which each owns and operates.
18	Description of Source		The MRPC LFGTE facilities are not "related activities" of the landfill. Furthermore, gas sold by OCLC to MRPC is routed to the MRPC in-take line, not to the MRPC engines.
18	Description of Source	Odor Control	The description of the open flare for odor control is incorrect. The open flare has a blower and applies vacuum to extract LFG for odor control and to comply with the USEPA NSPS for MSW landfills.
18	Description of Source	Leachate Recirculation	Revise (b): "recirculation through specific areas of the waste to promote faster biodegradation of the waste." Leachate recirculation is not conducted on all areas of the landfill. Historically, parts of Cell 5 and 6 had leachate recirculation. Currently, only certain areas of Cell 7 have active leachate recirculation. See the 9/21/2012 *Response to Completeness Determination Letter* for more details on this issue.
19	Description of Source	Treated LFG	Revise to "All landfill gas used as fuel in the MRPC Engines is treated.....".

Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

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	Permit Wide	Permittee	There needs to be an allocation of OCLC and MRPC compliance responsibilities such that each is responsible only for compliance with requirements applicable to the emission units that they own and operate. See OCLC Comments.
	Permit Wide	7:27-8	Reference to NJAC 7:27-8 should be changed to either NJAC 7:27-22 or to a specific OCLC or MRPC Title V Permit Condition (NJAC 7:27-8 are the NJDEP minor source regulations). Both OCLC and MRPC are major sources. The conditions referenced originate from each facility's Title V Operating Permit which is authorized per NJAC 7:27-22.
	Permit Wide	Application Proposed Items	Emission unit changes, landfill gas flow and heat input restrictions and Potential to Emit limitations proposed in OCLC's Part 71 application need to be incorporated in any Part 71 Permit issued to prevent double counting where landfill gas is sent either to the LFGTE Facilities or to the flares.
	Permit Wide		Recent modifications to OCLC's Part 70 Permit approved by NJDEP need to be incorporated into any Part 71 Permit issued. Pursuant to Region 2's instruction, a copy of this Permit has been provided in advance of these Comments. As stated in the cover letter dated January 15, 2016, a correction is needed to treat qualifying portable screener engines as non-road, insignificant sources and not as stationary sources. See also OCLC Comments.
	Permit Wide		All NSPS and NESHAP requirements are being met by the GCCS Plan, SSM Plan, as well as reporting, monitoring and performance testing performed by OCLC. Costly additional requirements cannot be justified. See OCLC Comments.
1	Permit Wide		Replace "Lakehurst Borough" with "Manchester Township". Also, there is no such entity as the "Ocean County Landfill and MRPC Holdings LFGTE Operations." Notably, no person is the owner or operator of any such emission source, and OCLC and MRPC submitted separate permit applications for only those emission sources which each owns and operates.
18	Description of Source		The MRPC LFGTE facilities are not "related activities" of the landfill. Furthermore, gas sold by OCLC to MRPC is routed to the MRPC in-take line, not to the MRPC engines.
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18	Description of Source	Leachate Recirculation	Revise (b): "recirculation through specific areas of the waste to promote faster biodegradation of the waste." Leachate recirculation is not conducted on all areas of the landfill. Historically, parts of Cell 5 and 6 had leachate recirculation. Currently, only certain areas of Cell 7 have active leachate recirculation. See the 9/21/2012 *Response to Completeness Determination Letter* for more details on this issue.
19	Description of	Treated LFG	Revise to "All landfill gas used as fuel in the MRPC Engines is treated.....".

Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

Page	Condition	Brief Description	Concern
19		L-01-2	Treated landfill gas has been used in the boiler at the leachate treatment building since 1992. It was approved by NJDEP in OCLC's initial Part 70 Operating Permit and in the Air Pollution Control Operating Permit Modification and Preconstruction Approval BOP050001 (5/22/06). USEPA Region 2 was notified of the approval and did not object. There is no valid basis for revoking this authorization, it should be incorporated in any Part 71 Permit issued, and the proposal to require use of only fuel oil should be deleted. See OCLC Comments.
20		L-01-CD11	Need to revise this description as follows to indicate an ability to use an open flare in NSPS areas: "Portable open flare-600 scfm. Combusts landfill gas not used otherwise, including gas from léachate/condensate storage tanks." This language is consistent with CD1 and CD10 which are the other NSPS control devices.
20		L-02-3-2	Delete this Condition. Anaerobic tanks are already listed.
20		L-02-3-3	See comment above for Condition L-01-2. Revise the description to: "Boiler for leachate treatment system- 2.5 MM Btu/hr, burns #2 fuel oil or treated landfill gas. Used to heat the leachate treatment plant and the leachate."
21		L-03	Subunit L-03 and all associated Device ID#s L03-1 through L-03-4 should be removed from the Part 71 Permit and placed in an Insignificant Units section. They are not stationary sources subject to the RICE NSPS and NESHAP. These engines are used at various locations at the OCLC SWF and are not located at any site for 12 months or longer. This qualifies these engines as "nonroad" under the applicable EPA definition. 40 CFR 1068.30 (an engine is not a stationary source if it will not remain "at a location for more than 12 consecutive months" and for this purpose, "location is any single site at a building, structure, facility or installation."). Additional information is found in OCLC's 9/21/2012 Letter in response to Completeness Determination and the OCLC Comments.
21		L-03-1 through L-03-4	See comment above for L-03. Additionally, the engine listed in L-03-4 is a Nissan BD30T15 and should be reflected accordingly in any Part 71 Permit issued.
21-22		R-CD40	Need to make clear that these requirements apply only when the building is accepting waste.
24		IS-L-01	2,000 gal UST was pulled many years prior to the Part 71 Application and has been replaced with 1,000 gal AST. It is Insignificant Source ID IS8 in the Part 70 Operating Permit, which was provided in advance of these Comments. This was documented as part of the Part 71 Operating Permit Application and should be reflected accordingly in any Part 71 Permit issued.

Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

Page	Condition	Brief Description	Concern
26	Source wide	Section II.A	Requirements need to be separated to make OCLC and MRPC each accountable only for compliance with those applicable to the emission units each exclusively owns and operates; see comment above re: "Permit Wide" conditions; see OCLC comments.
27	6	Control of LFG	Revise this condition to add CD-11. Revise language to: "OCLC shall control landfill gas not sent to the MRPC LFGTE Facilities using the flares, L-OI-CD1, -CD10, and -CD11."
28	8	Maximum Gas Flow	Revise this condition to add CD-11. Revise language to: "Maximum gas flow to the flares, L-OI-CD1, -CD10, and -CD11, and...." See comment above re 'permit-wide' terms, "Application Proposed Items"; see OCLC Comments.
28-29	9-11	Monitoring and Testing Requirements	OCLC does not operate the MRPC facilities and its emission units and MRPC does not operate the OCLC SWF and its flares. MRPC is the exclusive operator of the LFGTE Facilities and their emission sources and OCLC is the exclusive operator of the OCLC SWF and its flares. In addition to making these corrections, all monitoring and testing requirements need to be allocated so that they do not require compliance by the person not the owner or operator. See Comment above re 'permit-wide' requirements; see OCLC Comments.
29	12a, 12c, 12e	Flow Metering	The overall accuracies provided in 12a and 12c are not consistent. How is compliance demonstrated? Please delete these accuracy requirements.
30	13	"Source wide Log"	This Condition should be deleted. It is not in either Part 70 permits. There is no regulatory basis for requiring unrelated source owners and operators to compile and maintain a single log of information regarding their emission units. See OCLC Comments. Also, no representative of OCLC can certify as to the accuracy of information regarding the MRPC emission sources and emission units. As to OCLC, the Landfill NSPS requirements apply.
33	20	Metering of Gas	Replace with conditions from the Part 70 Permits which require measurements at flares and MRPC EU-E1 and EU-E2. OCLC does not have meters at every header and current controls have been approved by NJDEP and accepted by USEPA Region 2 as sufficient to show compliance with permit conditions without the costly additions proposed. See OCLC Comments.
40	40	Emission Statement	Requirements need to be allocated as neither OCLC and MRPC can produce or certify an emission statement with regard to emissions at sources they neither own nor operate. See OCLC Comments. Citation is NJAC 7:27-21 which means submittal to NJDEP?
43	59	Wellhead Design	Confirm that the NJDEP is the NSPS regulatory authority for approving design for future cap collection systems.

Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

Page	Condition	Brief Description	Concern
45	63	Wellhead Temp	OCLC uses an external temperature monitoring device as allowed by the NSPS. Revise the language of this Condition to: "OCLC shall install a sampling port and an access port for temperature measurements at each wellhead and...."
47	66-67	Stack Testing	Conditions 66 and 67 should be combined into a single Condition for permit term testing requirements. As written, the requirement to conduct testing at worst-case flare operations will adversely affect the delivery of fuel to the LFGTE operations. Please revise these conditions to provide flexibility during testing.
48	68	Flare monitoring	OCLC calibrates flow meters as per manufacturer's recommendations, but there is no maintenance calibration for thermocouples. Revise Condition 68.a to state that calibration of thermocouples is not required.
48	72	Continuous Monitoring	Remove the requirement for continuous monitoring It prevents use of LFG at the boiler at the leachate building and is in conflict with the authorization for such a use in OCLC's Part 70 Permit approved by USEPA. See comments on L-01-2 above; see OCLC Comments.
50	76	Landfill gas sampling	OCLC objects to the proposed sampling requirements that go beyond those in its Part 70 Permit. The need for requiring the additional expense, e.g., for additional laboratory analysis, is not justified. See OCLC Comments. The compounds hydrogen sulfide, benzene, 1,1,2-trichloroethane, vinyl chloride, VOC should be removed from the list in this Condition.
52	82	Landfill gas sampling recordkeeping	Remove hydrogen sulfide, benzene, 1,1,2-trichloroethane, vinyl chloride, VOC from the Condition for the reasons stated in the comment on Condition 76 above.
53-54	88-89	Emissions Statement	OCLC objects to this condition for the reasons stated in comments on Condition 40.
54	90	Reporting for Stack Test	OCLC objects to costly expansion of reporting requirements for the reasons stated in comment on conditions 66 and 67. See OCLC Comments.
54-56	91-113 and 116-120	Emissions limits	These emission limits are directly from the Part 70 Permit and therefore have not taken into account the requirement for permitting the OCLC SWF and MRPC LFGTE Facilities as a single source. If treated as a single source, emission limits should be those proposed in OCLC Part 71 Permit application which prevent double-counting.
58	123-124	Leachate	Remove this condition because it is not applicable. The collected bio gas is not directly combusted at the leachate treatment building. The actual emissions are accounted for in the gas collection and control system gas flows and ultimately in the emissions from the flares.

Ocean County Landfill - Comments on Draft Part 71 Permit P71-OCMH-001

Page	Condition	Brief Description	Concern
59	126	Leachate	OCLC currently complies with the Part 70 Permit requirements by collecting a single sample at the lagoon for VOCs and BOD. This is a more economical and conservative approach. The lagoon is the initial step of the leachate treatment process and therefore has the highest VOC and BOD levels, resulting in a conservative view of all tanks. The proposed requirement for costly additional and redundant sampling is unjustified and should be deleted. See OCLC Comments.
59	127	Leachate	Each tank does not have an individual flow meter and this is not required under the Part 70 permit. Please delete this language from this Condition.
59-66	128-151	Generators	The RICE generators should be removed from this listing and conditions treating them as stationary sources should be deleted. They are portable engines, not subject to RICE NSPS/NESHAP and to be treated as insignificant sources See Emission Unit 1-3 comment above. See OCLC Comments.
60	133	Generators	The requirement to prove cetane levels in fuel oil should be deleted because compliance is not possible. Also the fuel oil suppliers do not include cetane index or maximum aromatic content on each delivery slip. New emergency flare generator recently approved by NJDEP as a minor modification of OCLC's Part 70 Permit needs to be included. As directed, a copy of OCLC's current Part 70 Permit was submitted to USEPA Region 2 on Friday January 15, 2016.
92	281	TS/MRF	This Condition should be revised to reflect the requirement in the Part 70 Permit that requires opacity monitoring only when the process is in operation. See OCLC Comments.
93	283-286	TS/MRF	18,000 ACFM is incorrect because the blowers are not rated for this flow. The flow per blower unit should be 52,000 acfm per UNIT and 104,000 scfm as stated in Ref#4 of Emission Unit U4, OS1 in the Part 70 Permit. Also, it should be stated in this Condition that these requirements apply only when waste is being accepted.
93	286	TS/MRF	Replace Operating Range "Pressure Drop >=4 and Pressure Drop <=10 inches water column as per manufacturer recommendations." with "The permitee shall replace the filters when the differential pressure across the filter elements is greater than 10 inches w.c. or as based on manufacturers specifications". The replacement language is from the Part 70 Permit. Also, it should be stated in this Condition that the requirements apply only when waste is being accepted.

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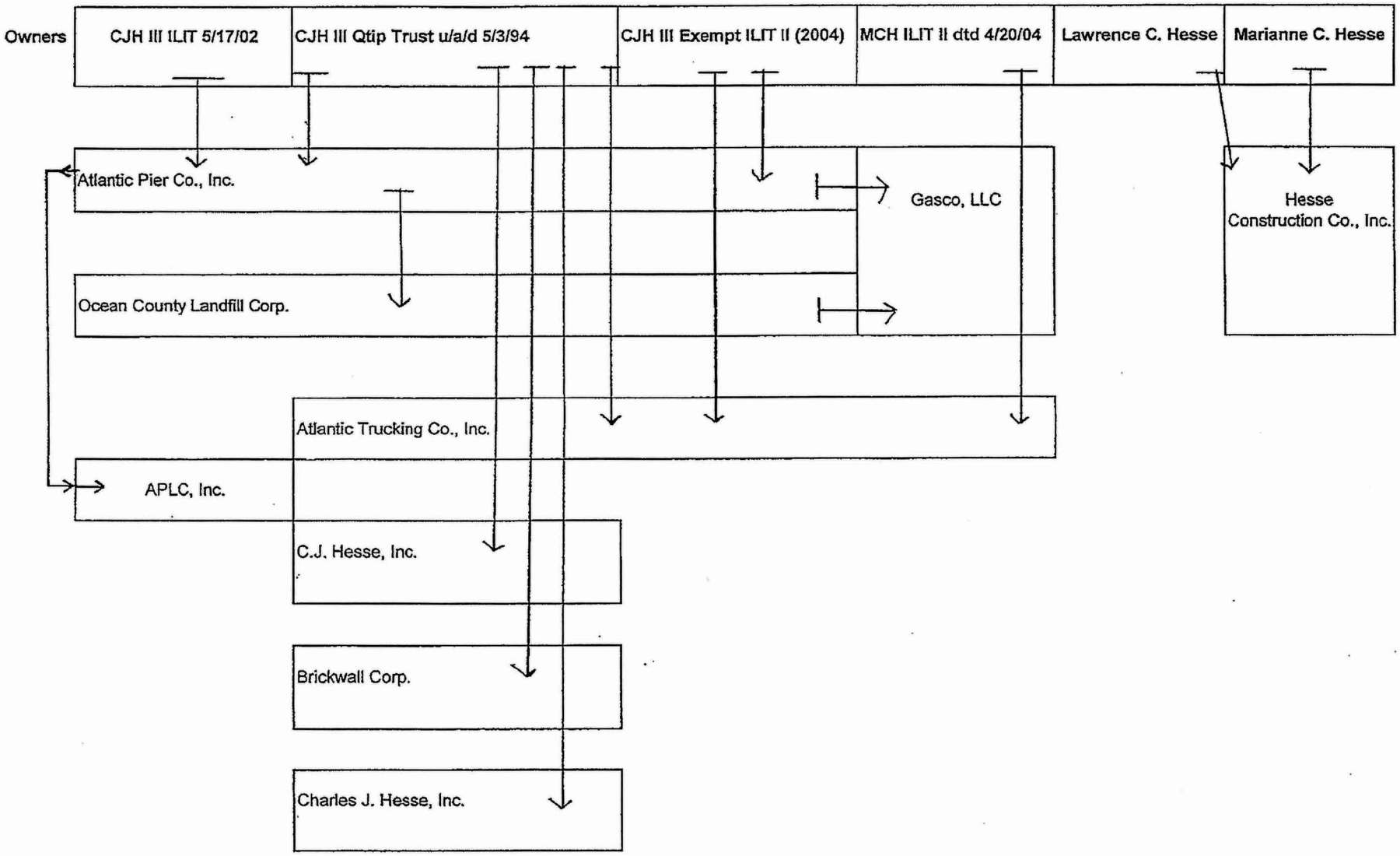

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LANDFILL ENERGY SYSTEMS
29261 Wall Street
Wixom, Michigan 48393
(248) 380-3920
(248) 380-2038 FAX

PURCHASE ORDER
CS-2270

☒ ORIGINAL ☐ CHANGE

Michigan Cat
25000 Novi Rd.
Novi, Michigan 48375
PH#: 248-349-7050
FAX#: 248-349-7508

SHIP TO
Will Advise

DATE	ATTN	P.O. No.	TAG No.	DELIVERY REQUIRED
12/19/2005	Karl Grundemann	CS-2270		July 15, 2006
SHIP VIA:		**YOUR REFERENCE No.**		**F.O.B.**
Best Way		Quote #10070347		Destination

QUANTITY	MODEL	DESCRIPTION
18	G3520TA	Caterpillar G3520TA Generator Sets rated 1600 KW @ 0.8PF, 4160VAC, 3 Phase, 60 Hz, for use on Low BTU Landfill gas. Each genset to include the engine build consist as shown on quote #10070347, which by this reference is made a part herein. Drawings: Provide (3) three sets of dimensional and electrical drawings, O&M and parts manuals per Gen Set to: Landfill Energy Systems 29261 Wall Street Wixom, Michigan 48393 Attn: Michael LaFramboise **TOTAL NET PRICE: Will Advise** **TERMS: NET 30 DAYS** **FREIGHT: Included in Price** Please sign, date and return attached yellow copy of Purchase Order to Landfill Energy Systems attention Mike LaFramboise for acceptance of this purchase order. Name: _____ Date: _____ Title: _____

POCS2270

IMPORTANT: Please note instructions below, which are part of this order.

1. Place our order number on all INVOICES, PACKING LISTS AND SHIPPING TAGS.
2. See Terms and Conditions on reverse side.
3. If you cannot deliver entire order as specified please advise us at once. Substitutions not authorized by us in writing automatically cancel this order and we will not be responsible for same.

☐ Taxable ☒ Tax Exempt B38-2712011

BY _____

WHITE - CUSTOMER • YELLOW - ACCOUNTING • PINK - FILE

ACCEPTANCE – The Acknowledgment Copy of this Purchase Order must be signed without change and returned immediately. Upon receipt by Purchaser, the signed Acknowledgment Copy of this Purchase Order shall become a contract, of which these terms and conditions shall be a part. The material, articles, services to other items covered by this contract are hereinafter referred to as "material."

1. SHIPPING AND INVOICING – Vendor shall enclose a packing slip in each separate container and a master packing slip with each shipment. Purchaser's count or weight shall be accepted as final and conclusive on shipments not accompanied by packing slips. Packing slips shall not show any prices.

   No charges will be allowed for boxing or crating unless otherwise provided in this contract.

   Unless authorized in writing by Purchaser, Vendor shall not undership or overship on this contract.

   Vendor shall issue separate invoices for each shipment against this contract which shall show the amount of material shipped. Bills of lading, express receipts or other evidences of shipment shall be attached to the invoices. The Purchase Order number, and part number, or where there is no part number, then a description of material shall appear on all invoices, packing slips, bills of lading, express receipts, correspondence and other instruments in connection with this contract, and where Vendor and the shipper are not the same, the names of both must be shown thereon to facilitate identification of shipment. The Purchase Order number shall also appear on all packages, crates, or boxes.

2. EXCUSABLE DELAYS – Vendor shall be excused for delays in making deliveries in accordance with the delivery schedule agreed upon in this contract when due to causes beyond Vendor's control and without Vendor's fault or negligence, if Vendor shall notify Purchaser in writing of the cause of any such delay promptly after the beginning thereof. Where any delay in making deliveries hereunder is due to Vendor's fault or negligence or is not excused as above, Purchaser reserves the right to cancel this contract in whole or in part.

3. INSPECTION AND REJECTION – The material covered hereby shall conform to the specifications, drawings and/or other description set forth in the contract and to samples required by the contract, and shall be of good material and workmanship and free from defect. Final inspection shall be made at the plant of Purchaser designated in this contract if preliminary inspection or test is made on the premises of Vendor, it shall furnish all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors of Purchaser or the Government in the performance of their duties. The foregoing shall not relieve Vendor of the obligation to make full and adequate test and inspection. Despite any prior payment or acceptance, Purchaser may reject and return material, or any installment of material within sixty (60) days after receipt thereof at Purchaser's plant for any defect discoverable upon inspection, and at any time from any defect not so discoverable provided, however, that in the case of material delivered in advance of scheduled delivery, the sixty (60) days period shall run from the date on which the material would have been received if delivered pursuant to the schedule agreed upon in the contract. Purchaser reserves the right to reject material as above and to require Vendor to remove same promptly and to require Vendor, at Purchaser's option, either to repay Purchaser the full invoice price therefor, plus all transportation charges paid by Purchaser, or to replace such rejected material, with or without requiring performance of the balance of the contract.

4. PATENTS – Vendor agrees to indemnify Purchaser, its successors, associates, customers and agents from any and all costs and damages on account of any claim that any of the material covered by this contract (except material made to Purchaser's specifications or design) infringes any United States Letters Patent, provided Vendor is promptly notified of each such claim.

5. COPYRIGHTS – Vendor agrees to grant to Purchaser and to the Government a royalty-free right to reproduce, use, and disclose any and all copyrighted or copyrightable matter required to be delivered by Vendor to Purchaser under this contract; provided however that nothing contained in this sentence shall be deemed to grant a license under any patent now or hereafter issued or imply and right to reproduce anything else called for by this contract.

6. CHANGES – Purchaser may, at any time, by a written order and without notice to the sureties or any assignees, issue additional instructions, change the extent or amount of the work covered by this contract, or make changes in or additions to the drawings and specifications. If such changes cause a material increase or decrease in the amount or character of such work or in the time required for its performance, an equitable adjustment of the prices to be paid to Vendor shall be made by Purchaser and Vendor, and the contract shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted by Vendor within thirty (30) days from the date on which the change is ordered and shall set forth the amount by which it is claimed the price is increased or decreased, together with a breakdown and other information sufficient to justify the claimed increase or decrease; provided, however, that Purchaser, if it determines that the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of the final settlement of the contract. Nothing provided in this Article shall excuse Vendor from proceeding with the prosecution of the work so changed.

7. COMPLIANCE WITH LAW – Vendor shall in the performance of this contract comply with all laws, regulations, ordinances, local laws, proclamations, demands or requisitions of the Government of the United States or any state, municipal government or any authority or representative thereof which may now govern or which may hereafter govern performance under this contract.

8. TOOLS AND MATERIAL – Vendor agrees (1) that all tools, jigs, fixtures, drawings and patterns, the price of which is itemized separately hereunder shall become the property of Purchaser upon payment for the same, but Purchaser shall not be obligated to pay for same under this contract until acceptance by Purchaser of the first run of parts fabricated by the same and Vendor shall be responsible for such tools and all material furnished by Purchaser without charge hereunder, for all loss or damage thereto while in its possession and same shall be (a) appropriately segregated, marked as the property of Purchaser and numbered with the part made, in order to accurately identify same at all times, (b) kept in good working condition and (c) used exclusively for the production of goods for Purchaser and subjected to no other use except with the written permission of Purchaser, (2) to pay to the proper authority when and as the same become due and payable, all taxes, assessments and similar charges assessed or imposed on Purchaser or Vendor or which Purchaser or Vendor may be required to pay with respect to or upon the tools, etc., and material referred to in the Article 8, or any part thereof, or upon the use thereof, while the same are in Vendor's possession or control, and, (3) that upon completion, cancellation or termination of this contract, such material, tools, etc., shall be held free of charge by Vendor pending instructions from Purchaser, and in the absence of such instructions within six months Vendor shall be entitled, after 30 days notice by Registered Mail to Purchaser, to store same at Purchaser's expense. Vendor agrees that all dies and molds the price of which is itemized separately hereunder or which are furnished by Purchaser without charge shall be kept in good working condition and remain in the custody of Vendor for the exclusive use of Purchaser.

9. TERMINATION – Non-Government: (a) Purchaser, by notice in writing at any time, may terminate this contract, in whole or in part, even though Vendor is not in default hereunder and no breach hereof has occurred; such notice shall state the extent and effective date of termination and upon the receipt by Vendor of such notice, Vendor will, as and to the extent prescribed by Purchaser, stop work under this contract and placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in Vendor's possession in which Purchaser has or may acquire an interest. If the parties cannot by negotiation agree within sixty (60) days from the date of the termination notice, or within such further time as may be agreed by the parties, upon the amount of fair compensation to Vendor for termination, Purchaser in addition to making prompt payment of amounts due for articles delivered or services completed in accordance with this contract prior to the effective date of termination, will pay to Vendor, in full settlement of all claims of Vendor by reason of such termination, the following amounts without duplication: (i) the contract price for articles or services completed in accordance with the contract and not previously paid for; (ii) actual costs incurred by Vendor which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this contract, including liabilities to subcontractors which are so allocable and excluding any charge for interest or materials which may be diverted to other orders plus a reasonable profit on work actually done by Vendor prior to such termination, provided that the total settlement shall not exceed the contract price of items included in the terminated portion of the contract. (b) Termination by Purchaser under this paragraph shall be without prejudice to any claims for damages otherwise of Purchaser against Vendor.

10. TAXES – Vendor agrees that, unless otherwise indicated in this contract (a) the prices herein do not include any state or local sales, use or other tax from which an exemption is available for purposes of this contract, and (b) the prices herein include all other applicable Federal, state and local taxes in effect at the date of this contract. Vendor agrees to accept and use tax exemption certificates when supplied by Purchaser if acceptable to the taxing authorities. In case it shall ever be determined that any tax included in the prices hereunder was not required to be paid by Vendor, agrees to notify Purchaser and upon request and at Purchaser's expense, to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Purchaser.

11. REPRODUCTION RIGHTS – Vendor agrees not to furnish any material made to Purchaser's designs or specifications to any other person or firm during the life of this contract and for a period of five (5) years from the date of completion or other termination of this contract without having first obtained Purchaser's written consent.

12. ASSIGNMENT – None of the monies due or to become due nor any of this work to be performed under this contract shall be assigned without the written consent of Purchaser having been obtained beforehand.

13. OFFSETS, SET-OFFS – Purchaser and Vendor agree that Purchaser shall have the right at any time to set-off any amounts now or hereafter owing, whether or not due and payable, by Vendor to Purchaser under this contract or otherwise, against amounts which are then or may thereafter become due and payable to Vendor under this contract.

14. WAIVER – The failure of Purchaser to insist, in any one or more instances, upon the performance of any of the terms, covenants or condition of this contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of Vendor with respect to such future performance shall continue in full force and effect.

15. MODIFICATION – No modification of this contract shall be effective unless agreed to in writing by authorized representatives of the parties hereto. Wherever the word contract is used, shall mean this contract together with any and all modifications.

16. NOTICES – Notices to Purchaser required under this contract shall be sent by mail addressed to a Purchasing Department, LANDFILL ENERGY SYSTEMS, INC.

17. ENTIRE CONTRACT – This contract and the authorized modifications thereof shall constitute the entire agreement between the parties.

18. CONSTRUCTION – This contract shall be construed and interpreted in accordance with the laws of the State of Michigan.